

EXHIBIT D

NORTH CAROLINA
WAKE COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
18-CVS-14001

COMMON CAUSE, et al., :
 :
Plaintiffs, :
 :
vs. :
 :
DAVID LEWIS, IN HIS OFFICIAL :
CAPACITY AS SENIOR CHAIRMAN :
OF THE HOUSE SELECT COMMITTEE :
ON REDISTRICTING, et al., :
 :
Defendants. :

DEPOSITION OF
MORGAN JACKSON

Taken by Defendants
Raleigh, North Carolina
May 15, 2019

Reported by: Eileen M. Dunne,
Court Reporter and
Notary Public

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Deposition of MORGAN JACKSON, taken by
the Defendants, at Brooks Pierce, 150 Fayetteville
Street, Suite 1700, Raleigh, North Carolina, on the
15th day of May, 2019, at 1:03 P.M., before
Eileen M. Dunne, Court Reporter and Notary Public.

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P R O C E E D I N G S

* * * * *

MORGAN JACKSON,

being duly sworn or affirming to tell the truth, the whole truth and nothing but the truth, was examined and testified as follows:

THE DEPONENT: I do.

EXAMINATION

BY MS. McKNIGHT:

Q For the record, my name is Kate McKnight with Baker Hostetler. I am here today with Tom Farr of Ogletree Deakins. We represent defendants in the matter Common Cause vs. Lewis.

I'd ask other counsel to announce their presence now.

MR. DAVID: Eric David from Brooks Pierce for the witness, Morgan Jackson.

MR. FLETCHER: Eric Fletcher from Brooks Pierce for the witness, Morgan Jackson.

MR. ROBINSON: John Robinson from Arnold & Porter Kaye Scholer on behalf of the plaintiffs.

MS. HENDERSON: Tomika Henderson from the North Carolina Department of Justice on behalf of the North Carolina Board of Elections.

MS. McKNIGHT: Thank you. And I'd like to make

1 understanding that to mean you in your role as working
2 with Nexus Strategies.

3 A That is actually me in my role as working with
4 Break the Majority.

5 Q Let's talk about Break the Majority. First, at
6 the outset, did I just understand you to say that Nexus
7 Strategies was not part of Break the Majority; is it a
8 separate entity from Break the Majority?

9 A Yes.

10 Q Did Nexus Strategies do any work in 2018 for the
11 legislative races in North Carolina?

12 A Yes.

13 Q What work did Nexus Strategies do?

14 A We did not do any work in the general election,
15 but we -- we -- some of our clients we did some work
16 for in the primary. But the general election work was
17 related to Break the Majority. And it was not Nexus
18 Strategies; it was myself.

19 Q Which clients did you do primary work for?

20 A Now, you're testing my memory. We did work for
21 Wiley Nickel at a state senate primary. I'm trying to
22 remember. That may have been the only real legislative
23 primary that we were involved in in '18.

24 MR. DAVID: To the extent he's answering about
25 some of his clients, I'd like to designate that as

1 confidential.

2 MS. McKNIGHT: I understand.

3 BY MS. McKNIGHT:

4 Q Just so I understand the scope of the work that
5 Nexus Strategies did, you provided an answer related to
6 a client who was involved with a legislative election.
7 Without naming the names of clients, did Nexus
8 Strategies do any work for any clients other than
9 candidates for legislative races in North Carolina in
10 2018?

11 A Other than legislative races in 2018, is your --
12 your question is did we work for anybody outside of the
13 legislature in political campaigns?

14 Q Correct. If you -- if you -- if Nexus
15 strategies did any work for clients other than a client
16 in the election for North Carolina State Legislature in
17 2018.

18 A Yes.

19 Q And, again, without naming the names of the
20 clients, could you give me a sense of the types of
21 clients those were?

22 A In 2018, we did work on a judicial race. That
23 may have been it.

24 Q Was that judicial race in North Carolina?

25 A Yes.

1 Q Could you explain to me what Break the Majority
2 is?

3 A Um-hmm. Break the Majority was a partnership
4 with the state Democratic party and between the state
5 Democratic party, the state house caucuses, and the
6 state senate caucuses, and Governor Cooper.

7 Q And who were the principals of that partnership
8 in Break the Majority?

9 A The folks I just mentioned.

10 Q Pardon me. Who were the individuals who worked
11 on Break the Majority as principals in this effort?

12 MR. DAVID: Objection. Do you mean principals
13 from a legal standpoint or just people that worked
14 on it generally?

15 BY MS. McKNIGHT:

16 Q People who worked on it.

17 A So there was the state house caucus director,
18 the state senate caucus director, and they both had
19 staffs. There was the North Carolina Democratic Party,
20 and myself, of course, but that -- I don't -- I'm not
21 sure if I understand the question much deeper than that
22 or if you're asking me a deeper question than that.

23 Q Sure. Let me ask a very elementary question.
24 Day to day, who were the people running Break the
25 Majority?

1 A Myself, Kimberly Reynolds, who is executive
2 director of the Democratic Party; Ryan Deeter, who was
3 the state senate caucus director; and Casey Wilkinson,
4 who was the house caucus director.

5 Q When did the Break the Majority effort begin?

6 A I think we conceived of the idea in '17, began
7 raising money, I believe, in late '17, maybe -- maybe,
8 actually, a little bit earlier, maybe the fall of '17,
9 but certainly in '17.

10 Q And you said that you conceived of the idea in
11 2017. About when in 2017 did you conceive of the idea?

12 MR. DAVID: Objection.

13 A I -- earlier in the year sometime or maybe the
14 summer. I'm trying to remember.

15 Q What was the impetus for the idea?

16 A The impetus for the idea was that we needed to
17 break the majorities in the house and the senate to
18 change the policy outcomes of this legislature.

19 Q Why did you think of it in 2017 and not earlier?

20 MR. DAVID: Objection. And just, again, you're
21 using "you." I'm not sure he said that he
22 individually came up with the idea of Break the
23 Majority. I think he said "we" came up with the
24 idea.

25 A That's correct.

1 Q How do you know that?

2 A What do you -- I don't understand. How do I
3 know that?

4 Q How do you know that the people who came up with
5 the idea for Break the Majority were limited to those
6 within the North Carolina Democratic Party?

7 A Because they weren't at the table.

8 Q And "at the table," do I understand that to be a
9 metaphor?

10 A Yes, you do.

11 Q Okay. And how would you describe "at the table"
12 in the discussions leading up to the creation of Break
13 the Majority?

14 A I believe the discussions were largely with
15 myself, with leaders in the state Democratic Party
16 about the path forward. Governor Cooper was very clear
17 in 2016 that -- that -- he has said many times publicly
18 that his election was the first step to achieving
19 better policy outcomes. But we had to change the
20 legislature to get -- actually get real investments in
21 education, health care, and other issues the Democrats
22 care deeply about.

23 MS. McKNIGHT: For the record, I'd like to
24 place a placeholder for Exhibit 1 for the protective
25 order once we enter that. So I'd like to mark this

1 districts and suburban.

2 Q Are you familiar with the term "support scores"?

3 A Yes.

4 Q What does that mean to you?

5 A It is a -- various groups use support score
6 based on -- I'm not -- I've never created one, so I'm
7 not exactly sure what goes into them but past political
8 performance, I think, maybe even consumer data and
9 polling data.

10 Q You said you've never created one. Have you
11 ever used one?

12 A Yes. For individual voters, yes.

13 Q Did you use support scores in 2018 with Break
14 the Majority?

15 A Yes.

16 Q And did you use support scores in certain of the
17 districts you worked in or in all of the districts?

18 A All of the districts.

19 Q Okay. And what did they tell you?

20 A They generally give you a spectrum of where the
21 estimation of how a voter would vote if he or she
22 votes.

23 Q Does this go back to categorizing voters by base
24 and -- what was the term we used earlier?

25 A Persuadable.

1 Q Persuadables?

2 A Um-hmm.

3 Q Okay. Do support scores use those same
4 categories?

5 A Yeah. There are more. I think there are --
6 I'm trying to remember. There are several -- there --
7 there are numbers and they go from 0 to 100 or 100 to
8 0. I can't remember which way. And it depends on the
9 ones you look at. It depends on which is higher or
10 lower, meaning Democratic.

11 Q Do they have more or different categories for
12 voters other than base and persuadable?

13 A In support scores, really not that way. It's a
14 0 to 20, a 20 to 40, a 60 to 80, an 80 to 100, if I can
15 recall correctly. You look at different buckets that
16 are -- and you don't call them base and persuadables.
17 It's much more you look -- what we utilize support
18 scores in Break the Majority was for Turn Out the Vote.
19 We looked at -- that if these folks were likely to
20 vote, they would likely be Democrats, and those are the
21 folks that we spent time talking about -- talking to.

22 Q And can you bear with me; can you go back to 0
23 to 20. Does it then go 20 to 40, 40 to 60 --

24 A Something like that.

25 Q -- something like that?

1 A That's correct. Some are 0 to 30. Again, it
2 depends on the metric but different of them are graded
3 differently.

4 Q And so if there is a support score in a district
5 that is 20 for Democrats, does that literally mean that
6 you expect to get to 20 percent votes for a Democratic
7 candidate; is that how you read it?

8 A It's a little bit more confusing than that,
9 honestly. It is the -- as I said, the different --
10 different support scores are calculated, it's my
11 understanding, differently. So it doesn't necessarily
12 mean -- it's not as simple as 0 to 100 means a hundred
13 percent of the time they're going to vote for Democrats
14 or zero percent of the time, but it is when you look at
15 -- we spend a lot of time looking at support scores,
16 especially when early voting is -- is being voted. So
17 that we look at who has already voted, what is -- what
18 is it we believe the people who have early voted so
19 far, how they might vote. We obviously don't know, but
20 based on all these data points, this is what the -- the
21 formula would -- would predict. It's a predictive
22 model more than anything.

23 Q I see. And is it -- I understand you're
24 describing it as a formula. Does it include anything
25 other than averages of elections? For example, does it

1 include any form of weighting different elections or
2 different factors?

3 A Again, I -- I don't create the support scores,
4 so I'm not exactly sure what all goes into the -- into
5 the pot.

6 Q Okay. And I understand that you use support
7 scores. Did you use one set of support scores in 2018?

8 A Yes, largely the DNC support scores.

9 Q And do you have any sense of how the DNC
10 calculates its support scores?

11 MR. DAVID: Objection.

12 A I don't know what goes into the mix.

13 Q And did you use anyone else's support scores in
14 2018?

15 A I'm trying to remember. I think primarily the
16 DNC. I think we may have only used the DNC as far as
17 the party.

18 Q And so at 0 to 100, is, sort of, closer to 100
19 more support for Democrats and closer to zero, less
20 support?

21 A Yes.

22 Q Okay. And I understand it may be a spectrum of
23 support. Would you describe to me whether -- how you
24 would use that spectrum of support?

25 MR. DAVID: Objection.

1 A Again, it depends on what you're using it for.
2 There's also a turnout score based on how likely you
3 are to vote. And oftentimes it is used in conjunction
4 with that to create a different metric of how likely
5 someone is to vote and how likely they are to vote
6 Democratic if they vote.

7 Q What would you call that metric that has the
8 turnout score combined in some way with the support
9 score?

10 A It's not really -- that's -- I -- I -- let me
11 rephrase that. It's not really -- it doesn't create a
12 new number. It is the -- the way you calculate your
13 voters in a district is you say I'm going to search for
14 how many voters are 0 to 20 and a turnout score of 80
15 to 100. Those are voters who are going to vote
16 whenever there is an election. Zero to twenty are
17 people who are rarely, if ever, going to vote, I
18 believe is the -- as I go back through it, I think that
19 is the right metric here. It might be flipped. They
20 always confuse me but -- as you can tell, I'm not the
21 voter file guy.

22 But you calculate those together and say, all
23 right, well, let me pull -- you rarely just pull a -- a
24 support score. You have to pull it by turnout because
25 otherwise it's -- it's useless. If I know somebody is

1 100 percent Democratic voter, but they voted once in
2 the last 20 years, that's not -- that's not useful to
3 me. I need to know who is actually going to turn out
4 or who has -- who -- who do you need to communicate
5 with to inform them there is an election and, as we
6 talked about, persuadables. You have to look at the
7 metrics to figure that out. And that's what we have
8 really smart data people to do. That's not my thing.

9 Q I'd like to ask you a few bigger picture
10 questions about our political system and how you
11 understand it.

12 Do you believe that voters have a right to
13 representation?

14 MR. DAVID: Objection.

15 A I've honestly never thought about do voters have
16 a right to representation. I -- I -- on the face of
17 it, it sounds right. I mean, sure, but I just haven't
18 given thought to it. As I said, I'm a practice guy,
19 not a theory guy.

20 Q Fair enough. And what are those rights to
21 representation?

22 A I have never --

23 MR. DAVID: Objection.

24 A -- given it thought -- given it thought what the
25 rights to representation are.

1 definition of what's fair and unfair as far as
2 districts being drawn, I understand that you're looking
3 at electoral outcomes. So if you under -- if your
4 position is that districts don't need to be redrawn
5 after every election, can't you expect that there will
6 be election outcomes where there is a variation between
7 support for certain parties and the number of seats
8 they have in the legislature?

9 A I believe it should be a minor variation. If
10 the districts are drawn fairly, you will not have --
11 you shouldn't have wild swings of 15 percent off
12 consistently from what the -- what the vote totals are.

13 Q What do you base that opinion on?

14 MR. DAVID: Objection.

15 A I base that opinion on -- on practice. If you
16 consistently get 50 percent of the vote in a district,
17 then -- over 50 percent, you're going to consistently
18 win in that district.

19 MR. FARR: Can we take a break?

20 MS. McKNIGHT: Sure.

21 (A break was had.)

22 MR. DAVID: So I just want to make sure that I
23 designate the discussion you-all had about the
24 support scores, we'd like to designate that whole
25 discussion as confidential.

1 MS. McKNIGHT: Okay.

2 BY MS. McKNIGHT:

3 Q Mr. Jackson, we have discussed today the drawing
4 of electoral districts in North Carolina for the house
5 and the senate, and I'd like to ask you how should
6 these districts be drawn differently?

7 A I think --

8 MR. DAVID: Objection.

9 A -- I would believe they need to be drawn in a
10 more fair manner so that the will of the voters is
11 represented in the outcomes of the elections.

12 Q What criteria would you use or should the map
13 drawer use in order to draw maps in North Carolina?

14 MR. DAVID: Objection.

15 A I'm not a -- I'm not proficient on what the
16 legal requirements are. You mentioned some earlier.
17 But, again, I'm -- I focus on electoral outcomes, and I
18 think that districts should be drawn in a way that
19 ultimately -- and, of course, there will be variances;
20 in elections, there are good years and bad years for
21 both parties. But I think in the basics that the
22 districts over a period of time mirror or closely
23 mirror the elect -- the results of -- of the voters.

24 Q Now, in 2018, you told people that you believed
25 Break the Majority could break the majority in the

ERRATA SHEET

Case name: COMMON CAUSE, et al.
vs.
DAVID LEWIS, et al.

Case number: 18-CVS-14001

Witness name: Morgan Jackson

Date: May 15, 2019

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SIGNATURE PAGE

I, Morgan Jackson, do hereby state under oath that I have read the above and foregoing deposition in its entirety and that the same is a full, true and correct transcript of my testimony, subject to the attached list of corrections, if any.

Morgan Jackson

Sworn to and subscribed before me this _____ day
of _____, 20____.

Notary Public

My commission expires: _____

Mail to:

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4208 Six Forks Road, Suite 1000
Raleigh, NC 27609

ED

1 CERTIFICATE OF REPORTER
2

3 STATE OF NORTH CAROLINA)

4 COUNTY OF WAKE)
5

6 I, Eileen M. Dunne, the officer before whom the
7 foregoing deposition was taken, do hereby certify that
8 the witness whose testimony appears in the foregoing
9 deposition was duly sworn by me; that the testimony of
10 said witness was taken by me to the best of my ability
11 and thereafter reduced to typewriting under my
12 direction; that I am neither counsel for, related to,
13 nor employed by any of the parties to the action in
14 which this deposition was taken, and further that I am
15 not a relative or employee of any attorney or counsel
16 employed by the parties thereto, nor financially or
17 otherwise interested in the outcome of the action.
18
19

20 _____
EILEEN M. DUNNE
21 Notary Public # 201314900195
22
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24
25